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ABSTRACT

A forensics background offers the greatest advantages for attorneys who engage in trial and appelate work. Successful lawyers build upon a few basic qualities: (1) the ability to view objectively the arguments on both sides of the case, (2) adequate research and preparation, (3) correct choices as to which arguments to press, (4) a well-conceived organizational scheme and purpose, (5) a "sense of the jury," (6) awareness of physical surroundings, (7) the ability to think on their feet, (8) sensitivity to a judge's idiosyncracies, (9) skill in brief writing, and (10) awareness of when to base an argument solely on law and when to include a discussion of public policy considerations. These qualitites can be enhanced by forensics in general and extemporaneous speaking in particular. Extemporaneous speaking requires research and preparation, good sources, prudent selection of topics, consideration of both sides of a question, selection of arguments deliverable under time restrictions,and clarity and organization. In judging such speeches, the recent trend of giving style precedence over substance should be reversed, and extemporaneous speaking should be returned to its traditional role. A recognition and acceptance of the existence and desirability of the competitive nature of forensics will arrest the decline of extemporaneous speaking. The first step is changing the current judging criteria. This can be done by upgrading the caliber of judges, improving the questions asked, and insisting upon rigid adherence to exacting standards of quality. (JL)

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EXTEMPORANEOUS SPEAKING AS PREPARATION FOR A CAREER IN LAW

Presented at the 1982 Convention
of the Speech Communication
Association, Louisville, Kentucky

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All words,
And no performance!

Philip Massinger's words are, unfortunately, a fairly accurate description of the current state of extemporaneous speaking. With few exceptions, extemporaneous rounds rarely produce intellectual skirmishes of any significance. In recent years, the emphasis in the event appears to have shifted to the point where form and style are glorified over substance. The words are there, but there is no real performance. While it would be unwise to discount style completely, the advantages to be gained from a strong emphasis on substance and preparation are undeniable. Returning to a more traditional approach would restore the proper role and purpose of extemporaneous speaking, distinguish it from other individual events, and enhance its value as preparation for legal and other careers.

There should be little doubt as to the value of public speaking for any career-oriented individual. The ability to examine critically new ideas and concepts and the ability to communicate one's own positions are invaluable assets. A. E. Dick Howard, White Burkett Miller Professor of Law and Public Affairs at the University of Virginia, refers to college speech activities as a "signal advantage."

However, it is possible to overstate the case for public speaking as preparation for a career. This is particularly so with respect to more demanding professions, such as law. A wide variety of skills are needed in any profession, and public speaking can provide but a few.

It is precisely because forensics' role is limited that the coverage must be complete and the performance conscientious. Recently, this has not been the case. The event which, realistically, should be expected to provide the best training, extemporaneous speaking, has deteriorated to the point where the skills emphasized are not wrong, but they are not enough.

An examination of the skills necessary to pursue a career in law, the nature of extemporaneous speaking, and the fit between the two, will reveal the inherent value of extemporaneous speaking and the changes which need to be made to enhance that value.

The Practice Of Law

At the outset, it is necessary to specify the type of legal practice for which forensics is good preparation. Many lawyers engage in practices which involve little or no public speaking and, for them, a forensics background is of little benefit. The attorneys for whom forensics offers the greatest advantages are those who engage in trial and appellate work, for their experience most closely resembles the competitive speech forum. Attorney Thomas L. Gruich describes the practice of law as "largely the art of persuasion."

The subject of the attorney's purpose has engendered much debate. Leaving moralizing to others, this discussion is best served by viewing the role of lawyer as a combination of Canon's 6 and 7 of the Model Code of Professional Responsibility -- a lawyer should represent a client competently and zealously within the bounds of the law.

The justice system in this country operates optimally only when the attorneys on both sides pursue their causes with resove and vigor.

It would be foolish to attempt an exhaustive list of the qualities and characteristics a good lawyer must possess. To begin with, there is dispute as to what a "good lawyer" is. Lawyers themselves rarely speak in terms of "good" or "bad" lawyers. Rather, they often refer to particular characteristics -- certain lawyers are considered scholarly, others are flamboyant speakers, still others are just plain lucky. Through it all, however, the lawyers who are consistently successful in obtaining verdicts for their clients and in satisfying their client's desires build upon a few basic qualities. While the application of the principles about to be discussed will differ from case to case and from courtroom to courtroom, sound fundamentals, in the legal profession as in any other, are the lawyer's best friends.

From a chronological viewpoint, the job of a lawyer begins with his examination of his client's case. This is an ongoing process, during which positions are constantly shifting and must be coninuously re-examined in light of new evidence which arises and in light of potential opposing positions. A lawyer does well to remember that there is always a certain amount of truth in his opponent's argument. There are very few black and white cases; most are grey in color and frustrating in their refusal to fall neatly into place. Hence, it is critical that a lawyer have the ability to view objectively the arguments on both sides of the case, in light of the facts as they exist.

Having decided to take a case, the lawyer must decide on which

theories he will pursue and on the best method to counter probable defenses. Many lawyers rely on their years of experience to determine which contentions will succeed and which will not. However, most lawyers depend upon painstaking research to disclose the strength and weaknesses of their arguments. They are fortunate in having a bank of materials which is extremely well cross-referenced and which lends itself to thorough and fairly rapid review. The importance of research and preparation is not easily underestimated. As practicing attorney David J. Lee put it, "Confidence is based on preparation."

During the course of preparation and, in fact, throughout the course of proceedings, lawyers make choices as to which arguments to press and which positions to abandon. Based partly on research, partly on the facts of the individual case, and partly on the attorney's own instincts, these selective decisions must be made. The necessity for such choices becomes even more acute when one considers the potential damaging impact on strong positions of an ill-advised insistence on weak ones. Many healthy cases have been perceived as infirm and the favorable inclinations of many judges have been lost due to the failure of counsel in recognizing the need to purge a case of the taint of weakness.

Effectiveness in court requires a well-conceived organizational scheme and purpose. Clarity is critical, particularly during arguments on motions in which the attorney has but a few moments to familiarize the judge with the issues and persuade him of the correctness of the attorney's position. Many attorneys lose arguments and are

unable even to present their entire position because of the court's impatience with an unclear and disorganized approach. Strategy will vary, but certain sound organizational principles are constant. Again, this relates to research and preparation. A lawyer unfamiliar with the facts or the law cannot answer confidently questions posed by the judge. Proffered answers are often rambling and unresponsive. One of the major criticisms of the bar in recent years has been the lack of enthusiasm and preparation on the part of trial counsel. Positions with merit are easily lost through mishandling. Preparation and organization avoid this pitfall.

When arguing a case to a judge or jury in opening statements or final arguments, lawyers are not ususally constrained by time limits. However, along with the right to speak interminably comes the responsibility to know when to stop. Juries, like audiences in forensics, have certain questions they would like answered. Once those answers are given, further repetition and exposition are detrimental. It is necessary for a lawyer to have what Mr. Lee refers to as a "sense of the jury." Beside having sound speaking skills, a good trial attorney must be able to monitor and respond to his audience, the jury. Quizzical looks and nodding heads convey different meanings and require different responses. Lawyers must know when to reverse directions, when to clarify, and when to hammer a point home.

Lawyers must consider not only attitudinal factors, but the physical surroundings as well. An amusing acknowledgement of this point is found in the following notation to a ministerial brief, said to

have been read inadvertently in the House of Lords: "This is a rotten argument, but it should be good enough for their lordships on a hot summer afternoon."

In conducting a trial and arguing on the appellate level, the lawyer must have the ability to think on his feet. No trial goes by without suprise and no appellate argument is made without an unanticipated question. Despite the most thorough preparation and strategy, a lawyer must be prepared to reorganize instantly in order to take advantage of advantageous developments or minimize the damage caused by adverse revelations.

That a lawyer must acquire the ability to reorganize instantly in order to satisfy a judge's organizational idiosyncrasies is illustrated by a well-known story. A lawyer was scheduled to argue before an appellate court and put a great deal of careful thought and preparation into his argument. Confident in his skillfully conceived outline, the lawyer began his argument, but was soon interrupted by a question from the bench. Alarmed at the disruption the lawyer said, "I will get to that point very soon, your Honor." To which the court replied, "You're there now, Counselor." The attorney was unable to regain his composure after his carefully laid plans had gone astray, and he lost the argument. He made the mistake of confusing thorough preparation with a rigid position. Complete preparation gives an attorney true flexibility, for he is able to shift gears at any time, maximizing his opportunities and exploiting his opposition's weaknesses.

Arguing on the appellate level involves an activity which many lawyers dread - brief writing. Time consuming, and somewhat frustrating, writing a brief involves many of the same considerations found at trial, although obviously in a different context. Just as an attorney must decide whether a particular witness is credible enough to put on the stand, the choice of sources to include in a brief often is also based on the credibility of the sources. Certain courts are more influential than others, certain treatises and legal encyclopedias are rarely cited, and the opinions of certain judges carry more weight than the opinions of others.

Appellate counsel must be aware of when it is prudent to base argument solely on the law and when the better course is to include a discussion of public policy considerations. Sometimes, these choices are dictated by the tribunal hearing the argument, but more often they are made with reference to the facts and circumstances of the particular case.

Throughout the trial and appellate process, an attorney builds on preparation and research into the facts, law, and legal theories of each case. Sound preparation allows an attorney to plan strategy, anticipate the opposition, and move deftly while in court. Having good speaking skills, a "sense of the jury," a clear organizational scheme and purpose, and the ability to continuously re-examine the case based upon the facts, evidence, and potential arguments of opposing counsel, are all attributes for which an attorney must strive. They are qualities which can be enhanced by forensics in general and extemporaneous speaking in particular.

Extemporaneous Speaking as Preparation for a Career in Law

Each individual event offers some type of valuable training. Interpretive events improve histrionic ability. Other events, such as persuasive speaking, informative speaking, after dinner speaking, and rhetorical criticism, enhance delivery, organizational, and research skills. However, the one event which requires a combination of all these skills and more is extemporaneous speaking. A good extemporaneous speech is as well documented, as well organized, and as well delivered as a speech which has been months in preparation.

As with the practice of law, success in extemporaneous speaking begins with research and preparation. Research must be thorough and involve a variety of source materials. Too many extempers rely on a limited range of background research. Countless speeches are given using only one source, and that particular source is usually wholly inadequate. Speakers should be very particular about the sources they include in their files. It is a serious mistake to assume that any source in print is credible. Few newspapers and magazines are objective and a speaker should familiarize himself with their political and social predilections.

Moreover, a speaker should strive to find unusual and insightful sources of information. The nuances of each topic demand different treatment; one magazine is not enough.

Even assuming that a speaker has researched properly in preparation for a tournament, the research will be useless without a prudent

topic choice. While it is inevitable that a speaker will be confronted from time to time with a Hobson's choice, too many speakers make the mistake of choosing a topic which does not lend itself to in-depth analysis. On the other hand, speakers often err by choosing topics which are hopelessly unanswerable. The later situation does not involve pomposity on the part of the speaker, but rather an over-zealous desire to answer a question of some significance.

Just as which theory of law an attorney will pursue is determined by the facts of the case, the contents of an extemporaneous speech are determined by the choice of topic. The topic selected must be one which is challenging and requires the speaker to demonstrate analytical skills and a grasp of the issues. In this regard, questions which ask the speaker to discuss the impact of certain events are excellent, particularly where they describe the area affected. For example, questions like "How would the deregulation of natural gas prices affect the economic recovery?" are to be preferred. Questions like "How can we achieve peace in the Middle East?" are impossible to answer, but the question may be usefully rewritten as "Discuss the elements which must be considered if we are ever to achieve peace in the Middle East." The proper objective is the drafting of a question which is not overly broad, but which still challenges a speaker's reasoning capabilities.

The speech itself must contain a consideration of both sides of the question. Many speakers smugly present a picture which is entirely one-sided and completely devoid of acknowledgement of an

opposing position. A speaker so inclined cannot hope even to approach a complete answer. A lawyer so inclined cannot held even to approach victory in the courtroom. Both sides must be examined and re-examined.

Choosing a challenging topic and giving credence to opposite viewpoints obviously will subject a speaker to some time pressures. Speakers in forensics tournaments do not have the luxury of unlimited time, though some speeches seem to drag on forever. Therefore, it is critical that a speaker make wise choices as to which arguments to pursue and the points to make in support of each argument. This is not unrealistic, since courts will sometimes inform attorneys that they have only a certain amount of time to make their arguments to the court. Commonly, attorneys are severely restricted in the amount of time they may spend arguing motions before a court. The case must be made quickly, completely, and persuasively.

The necessities of selecting proper arguments, considering opposing perspectives, and staying within the time limits, underscore the need for clarity and organization. Organization is a virtue insofar as it promotes understanding, impact, and fluid delivery. There is a disturbing tendency for judges to require and speakers to practice over-organization. Endless reminders as to which points will be discussed, which points are being discussed, and which points have been discussed, are cloying and a waste of time. Organization should be subtle, and references to the organizational pattern should be kept to a minimum. Discerning judges will recognize a competent organizational scheme; no more should be necessary.

Delivery and style have always been important criteria by which extemporaneous speakers were judged and they should continue to be so. However, style and substance are not mutually exclusive. No choice need be made between the two. The unfortunate truth is that, in recent years, an election has been made, if subconsciously, not to demand the level of substance previously required. Today, extemporaneous speaking rounds are forums for flash and drama with little intellectual depth. Consequently, the purpose and value of the event are being lost as its standards deteriorate. At its best, extemporaneous speaking is excellent preparation for certain aspects of a career in law. Participants learn the value of extensive research into a wide variety of sources, they learn to consider both sides of an issue, they learn to choose arguments selectively and wisely, they understand the necessity for organization and clarity, they learn to think on their feet, and moniter and respond to audience reactions. Extemporaneous speaking is not a complete preparation, but it is an invaluable introduction to the practice of those skills and qualities required for successful trial and appellate work.

Given the fact that extemporaneous speaking is so potentially useful, it is incumbent upon coaches, competitors, judges, and tournament organizors to direct their efforts toward returning extemporaneous speaking to its traditional role.

Improving the Event

Forensics has several purposes. It is an experience by which

students learn about public speaking and about the subject matter they discuss. Students learn to function in a system which is competitive and essentially adversarial. The personal acquaintances and friendships which often develop are sincere and lasting. Through it all, though, students strive for success. They seek personal improvement and recognition by others of their abilities. Efforts to downplay the competitive aspect of forensics are badly misguided, for such efforts only delay the student's realization that he must exist in a competitive environment. This is particularly true in the legal system, since the Anglo-American system of justice relies upon adversarial contention to discover the truth. As Professor Howard states, gaining a sense of adversarial confrontation is one of the primary benefits of college speech activities.

A recognition and acceptance of the existence and desirability of the competitive nature of forensics will result in a course of action to arrest the decline of extemporaneous speaking.

Competitors respond to the criteria applied by judges. It is not even necessary that the criteria possess any theoretical validity. Consider the case of the "need-to-know" step in informative speaking. Essentially the product of the same minds which believe that "relevance" is the controlling criterion by which all activities are judged, the need-to-know step has acquired wide acceptance. This despite the fact that most such steps are empty and contrived and the entire process exists primarily to soothe the trepidations of those judges who are lost without cliches to write on a ballot, such as "you have crossed the fine line."

Although the need-to-know step is an unfortunate development, it illustrates the effect that judges can have on individual speeches. Students learned that they would be more successful in informative speaking if they fabricated a need-to-know step. They have not been disappointed. By the same token, judges have the ability to improve the nature and value of extemporaneous speaking. An insistence on cogent and coherent reasoning, clear organization, and impressive documentation will improve the quality of extemporaneous speeches and help students realize the full benefit of the activity.

Convincing judges to change their ways is at best an immense task. The first step should be the implementation of a system to select judges with the ability to judge extemporaneous speaking properly. Many judges disqualify themselves from judging interpretive events or rhetorical criticism on the grounds they do not feel qualified. The same practice is virtually unheard of with regard to extemporaneous speaking, an event where proper judging is even more important because of the stringent demands which should be made of the speakers.

More exacting judging criteria will provide enormous returns, but the process should be improved even further by giving competitors a better choice of topics. Too often, people who write extemporaneous speaking topics for individual tournaments decide, for reasons known only to them, that students are best challenged by obscure and trivial questions. By improving the questions asked, coaches and tournament organizers can insure a higher quality of preparation and research.

Students, aware that they will face more demanding questions, will adjust accordingly.

By upgrading the caliber of judges, improving the questions to be asked, and insisting upon rigid adherence to exacting standards of quality with regard to every aspect of the presentation, extemporaneous speaking can once again be the most prestigious event in forensics and students will realize the full benefits of participation in it. The event has drifted to a point where poor topic choice, inconclusive ramblings, and an absence of authentic content are overlooked as long as style and polished delivery are present. At present, extemporaneous speaking rarely serves a useful purpose. The basic structure of the event has remained the same, but the emphasis within that structure has changed. Coaches and judges are responsible for the change and they must now be responsible for restoring a rational balance between style and substance.

Extemporaneous speaking does not exist solely to prepare one for a career in law, although the event can enhance and refine skills which are useful in a legal career. Regardless of a person's career choice, participation in extemporaneous speaking can yield great dividends. The unfortunate truth is that not enough is demanded of the participants. Higher standards for success will induce greater efforts to achieve that success. It is possible for style and substance to coexist. It is only through an insistence upon such a coexistence that a student can realize the full benefits of participation in extemporaneous speaking.